

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sherriah Mason c/o Florence Mason	:	
	:	
v.	:	F-2023-3041726
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of Sherriah Mason because the Complainant failed to appear at the scheduled hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On July 10, 2023, Florence Mason filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) on behalf of Sherriah Mason (Complainant). According to the Complaint, both PECO and the Bureau of Consumer Services (“BCS”) investigator assigned to investigate Sherriah Mason’s informal complaint at BCS Case # 3919834¹ lied about a Shut-Off Notice, deprived the Complainant of the opportunity to be heard, and violated her due process rights. As relief, the Complaint requests that the Commission establish a payment arrangement

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS) which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

on behalf of Sherriah Mason. Additionally, the Complaint demands an injunction against PECO as well as the immediate restoration of services due to health issues. Finally, the Complaint seeks compensatory and punitive damages as well as policy changes within the Commission and PECO to deter them from similar actions in the future.

On August 3, 2023, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated September 15, 2023, notified the parties that an initial call-in telephonic hearing was scheduled on November 6, 2023, at 10:00 a.m. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On October 12, 2023, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

The Hearing Notice and the Prehearing Order were served both electronically² and by U.S. First-Class mail upon the Complainant at the addresses that she provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

The hearing convened as scheduled on November 6, 2023. Khadijah Scott, Esq. appeared representing the Respondent. Neither Sherriah Mason, Florence Mason, or any legal representative of the Complainant called into the hearing. The Complainant was given an additional 20 minutes to call in but failed to do so.

² In the Formal Complaint form, the Complainant agreed to receive all documents by email at the email address she provided on the form.

At the hearing, counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. That Motion is granted pursuant to the ordering paragraphs below.

The record in this matter closed on December 11, 2023, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Sherriah Mason.
2. The Respondent is PECO Energy Company.
3. On July 10, 2023, the Complainant filed a Formal Complaint against PECO alleging that the Company and the BCS investigator assigned to investigate Sherriah Mason's informal complaint at BCS Case # 3919834 lied about a Shut-Off Notice, deprived the Complainant of the opportunity to be heard, and violated her due process rights.
4. As relief, the Complainant requests that the Commission establish a payment arrangement on behalf of Sherriah Mason.
5. The Complainant also demands: 1) an injunction against PECO; 2) the immediate restoration of services to Sherriah Mason; 3) compensatory and punitive damages; and 4) policy changes within the Commission and PECO to deter them from similar actions in the future.
6. On August 3, 2023, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

7. A Hearing Notice dated September 15, 2023, informed the parties that an initial call-in telephonic hearing was scheduled in this matter on November 6, 2023, at 10:00 a.m.

8. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

9. A Prehearing Order issued on October 12, 2023, directed the parties to comply with various procedural requirements and warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

10. The Hearing Notice and the Prehearing Order were served electronically upon the Complainant at the email address she provided to the Commission.

11. The Hearing Notice and the Prehearing Order were also served by U.S. First-Class mail to the address Complainant provided to the Commission.

12. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

13. The Complainant failed to appear at the November 6, 2023, hearing.

14. The Complainant did not request a continuance, withdraw the Complaint, or otherwise notify the Commission to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

In this Complaint, the Complainant alleges that both PECO and the BCS investigator assigned to investigate Sherriah Mason’s informal complaint at BCS Case # 3919834 lied about a Shut-Off Notice, deprived the Complainant of the opportunity to be heard,

and violated her due process rights. As relief, the Complainant requests that the Commission establish a payment arrangement on her behalf. Additionally, the Complainant also demands: an injunction against PECO; the immediate restoration of services to Sherriah Mason; 3) compensatory and punitive damages; and 4) policy changes within the Commission and PECO to deter them from similar actions in the future. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). Notice served to a party with no notification that service failed is presumed received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959) (*Meierdierck*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982) (*Judge*); *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*).

Both the Hearing Notice and the Prehearing Order were served via email to the Complainant using the email address provided in the Complaint and by U.S. First-Class Mail to the address provided by the Complainant. Neither was returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the November 6, 2023, hearing. *Berkowitz; Meierdierck; Samaras; Judge; Hu; Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing." (*citing, Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the September 15, 2023, Hearing Notice and the October 12, 2023, Prehearing Order advised the Complainant that the case could be dismissed for failure to call in and participate in the hearing. Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). Therefore, the Complaint will be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982); *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022).

